

CONSUMER PROTECTION IN KANSAS

1992



**Annual Report of the Consumer Protection Division
OFFICE OF ATTORNEY GENERAL
ROBERT T. STEPHAN
State of Kansas**

Submitted pursuant to K.S.A. 50-628.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

February 12, 1993

TO: The Honorable Joan Finney, Governor
and Members of the Kansas Legislature

I commend to your reading the following report of my Consumer Protection Division. In 1992, my Consumer Protection Division received over 4,000 formal written complaints resulting in consumer savings of \$757,938. As a result of efforts to educate consumers, more consumers have been made aware of our services. We continue to travel throughout Kansas and give consumer protection speeches to schools, civic groups and community organizations. Through my Consumer Protection Advisory Council, comprised of five citizens from each Kansas congressional district, I am advised of consumers' concerns from each area of the state.

I am proud of the assistance that my Consumer Protection Division provides to Kansas consumers. We participate in consumer protection efforts on not only a state level, but also on a national level through active cooperation with the National Association of Attorneys General. Such cooperation is particularly beneficial in combating deceptive practices by out-of-state businesses, i.e. telemarketing number promotions that violate the Kansas Consumer Protection Act.

It is a top priority of this office to protect Kansas consumers from deceptive or unconscionable business practices through strong enforcement of the Kansas Consumer Protection Act. Enforcement of consumer laws and consumer education efforts have been combined to protect Kansas consumers from unlawful business practices.

If my staff or I may be of service to you or your constituents, or if we can answer any questions you may have regarding consumer protection in Kansas, please feel free to contact me.

Very truly yours,

A handwritten signature in cursive script that reads "Robert T. Stephan".

ROBERT T. STEPHAN
Attorney General

INTRODUCTION

Through 1992, Attorney Robert T. Stephan's Consumer Protection Division received a substantial number of inquiries and complaints from consumers. More than 4,000 formal complaints and 3,474 written inquiries were made to the division. Such strong communication with consumers is directly attributable to this office's commitment to enforce consumer laws and provide consumer education to Kansans. As a result of lawsuits, settlements and mediation, consumers were saved \$757,938.

Through actions taken under the Kansas Consumer Protection Act, the Attorney General stopped deceptive and unconscionable practices by telemarketers, check cashing businesses, gasoline retailers, and many others. Many consumers are assisted in obtaining refunds or product delivery from out-of-state mail order businesses.

Attorney General Stephan continues to request those who violate the Kansas Consumer Protection Act to make donations to charities in Kansas. Food banks, shelters, the poor, children and cancer victims have benefited from this effort.

Consumer awareness and education continue to play an important role of the Consumer Protection Division. By speaking to students, civic groups and community organizations, consumers are provided valuable suggestions and alerted to fraudulent business practices.

A weekly newspaper column, "Consumer Corner", is sent to more than 200 newspapers throughout Kansas and provides useful reviews of problems experienced by other consumers. Also, the public can see past scams, rip-offs, etc. and speak with the Attorney General and his staff at the Kansas State Fair.

	Complaints Received	Percent of Total
Gasoline Pricing	3	0.07%
Gasoline Content	2	0.05%
Government Agencies	0	0.00%
Health Services (doctors, dentists, hospitals, etc.)	114	2.76%
Health Spas and Weight Salons	39	0.94%
Hearing Aids	16	0.39%
Heating and Air Conditioning	23	0.56%
Home Improvements	186	4.50%
Home Construction	21	0.51%
Hypnosis (smoking, weight loss, etc.)	0	0.00%
Invoice and Billing Schemes (noncredit code)	18	0.44%
Interest Rates & Lending Companies (noncredit code)	0	0.00%
Jewelry	15	0.36%
Kitchenware	1	0.02%
Land Sales (subdivided out-of-state)	2	0.05%
Land Sales (subdivided Kansas)	270	6.54%
Land Resale Companies	2	0.05%
Landlord/Tenant	0	0.00%
Loan Finders	22	0.53%
Lotteries	0	0.00%
Magazines	237	5.74%
Mail Order Companies	675	16.34%
Mobile Homes and Campers (sales/service)	17	0.41%
Mobile Home Parks	0	0.00%
Mortgages	53	1.28%
Mortgage Escrow Problems	11	0.27%
Motorcycles and Bicycles	3	0.07%
Moving and Storage	16	0.39%
Multilevel and Pyramid Distributorship Companies	11	0.27%
Musical Instruments, Lessons, etc.	0	0.00%
Negative Selection	13	0.31%
Nurseries, Gardening Equipment, etc.	9	0.22%
Nursing Homes	0	0.00%
Office Equipment and Supplies	10	0.24%
Pest Control	9	0.22%
Pets/Animals	9	0.22%
Product Safety	0	0.00%
Photo Equipment and Services	16	0.39%
Photo Studios and Companies	39	0.94%
Referral Selling	2	0.05%

DISPOSITION OF CLOSED COMPLAINTS

	Complaints Closed	Percent of Total
Inquiry or Information Only	33	0.77%
Referred to Private Attorney	142	3.31%
Referred to County/District Attorney	25	0.58%
Referred to Other Attorney General	394	9.20%
Referred to Other Kansas Agency	45	1.05%
Referred to Small Claims Court	295	6.89%
Referred to Federal Agency (FTC, Post Office, etc.)	85	1.98%
Money Refunded/Contract Cancelled	1,238	28.90%
Merchandise Delivered	183	4.27%
Repaired/Replaced	96	2.24%
Mediation Only -- No Savings	455	10.62%
No Reply From Complainant	192	4.48%
Unable to Locate Respondent	61	1.42%
Practice Discontinued	15	0.35%
Respondent Out of Business	50	1.17%
No Basis	98	2.29%
No Jurisdiction	204	4.76%
Insufficient Evidence	222	5.18%
Withdrawn	82	1.91%
Unable to Satisfy Complainant -- no further action	36	0.84%
Lawsuit Complaint Files:		
Respondent Enjoined	14	0.33%
Consent Judgment	64	1.49%
Voluntary Compliance Agreement	6	0.14%
Default Judgment	161	3.76%
Respondent Filed Bankruptcy	31	0.72%
Cemetery Abandoned	29	0.68%
Other	<u>28</u>	<u>0.65%</u>
TOTAL CASES CLOSED	4,284	100.00%

STATE, ex rel., SONNY HILL JEEP-EAGLE, INC.;
SONNY HILL CHEVROLET, INC. AND SONNY HILL
PONTIAC, GMC TRUCKS, INC. (I)

Defendant entered into a consent judgment and agreed to pay \$5,000 investigation fees and \$5,000 civil penalty for several advertisements which inadequately explained terms and conditions, represented used vehicles as new, and included discounts which were not available to most people. Defendant also agreed to the Attorney General's guidelines for new and used car advertising.

STATE, ex rel., SONNY HILL JEEP-EAGLE, INC.
AND SONNY HILL CHEVROLET (II)

Defendant continued to run advertisements that violated the Attorney General's guidelines while negotiating the aforementioned consent judgment. Suit was filed on November 24, 1992 alleging that defendant's advertising was deceptive in violation of the Kansas Consumer Protection Act. For example, one advertisement featured several vehicles with a price in large type. An asterisk referred consumers to the bottom of the ad where, in small type, it was stated that the price mentioned was after 20% of MSRP down. There is no way to figure the MSRP or the 20% amount. Also, an advertisement was placed in two different newspapers which showed a vehicle with specific monthly payments times 23 months at 5% A.P.R. When a consumer inquired about this vehicle at this price, he was told that that price was available if he put 15% of the MSRP down and paid a balloon payment of over \$10,000 on the 24th month. None of these additional terms were disclosed in the advertisement. Discovery is pending.

STATE ex rel., v. BUD MARTIN ENTERPRISES, INC.
d/b/a BAXTER DISCOUNT

The Attorney General filed suit against defendant who sold gasoline in Baxter Springs, Kansas. In a test initiated by the Board of Agriculture, it was discovered that the octane of their premium unleaded was more than 3 points lower than that posted. A subsequent examination of their records showed that significantly less premium unleaded fuel had been delivered than was sold. Also, only 200 gallons of regular leaded fuel was delivered, when over 5,000 gallons were sold. The defendant claimed that he was unaware of the

STATE, ex rel., v. WESTERN EXPRESS SERVICE
COMPANY, INC.

This is a Las Vegas mail order company that calls consumers and tells them they have won an award, which they can receive if they participate in defendant's promotion. The promotion is to buy personalized pen and pencil sets or gold-plated letter openers, or some other such promotional item at a highly inflated cost. The victims are often elderly, and are conned into purchasing goods they don't want or need with promises of wonderful prizes.

The state filed suit alleging Western Express' actions violate Kansas' new telemarketing fraud statute and the prices are unconscionably high. We are currently engaged in discovery.

STATE, ex rel., v. CAP CARPETS, INC.
d/b/a THE CARPET CENTER

This company sold some individuals carpeting, pad and installation. The pad sold to the individuals was represented as required in order for the warranty to be effective. Pursuant to the written warranty, this was not true. We entered into an Assurance of Voluntary Compliance with the defendant in July, 1992, wherein it paid \$2,000 in civil penalties and \$2,000 investigative fees.

STATE, ex rel., v. WAL-MART STORES, INC.
d/b/a HYPERMART (II)

Based on a consumer complaint, it was discovered that Hypermart had set its scanning cash register to ring up \$9.99 on grocery and product items that were not available in the store. In the event of a mistake by Hypermart in marking its produce, a consumer would be inadvertently charged \$9.99 rather than the actual price of the item. In this case, the consumer was charged \$9.99 for a \$1.39 item.

Hypermart agreed to discontinue this practice in a consent judgment and paid \$2,000 in investigative fees and a \$1,000 charitable donation.

STATE, ex rel., v. DIAMOND CORPORATION OF
CALIFORNIA, INC. d/b/a LASERVISION, AMERICAN EYE
INSTITUTE, INSTITUTE FOR EYE THERAPY

Defendant sold pinhole spectacles. Advertising claims and marketing practices were alleged deceptive. Pursuant to consent judgment, defendant agreed to discontinue sale of its product except to current customers, and paid \$7,500 civil penalty, \$17,500 investigative costs, refunds upon request within a 90 period, and ten charitable donations in the amount of \$1,000 each.

STATE, ex rel., v. NATIONAL SYNDICATIONS, INC.
d/b/a/ HEALTHSTYLE

Defendant sold pinhole spectacles. Advertising claims were alleged to be deceptive. Defendant voluntarily discontinued sale of the product. In a consent judgment, defendant agreed to pay \$7000 in civil penalties, \$7000 in investigative costs, and six charitable donations in the amount of \$1,000 each.

STATE, ex rel., v. KANSAS PSYCHIATRIC INSTITUTES,
INC. d/b/a THE KANSAS INSTITUTE

Petition alleged deceptive and unconscionable practices relating to billing. Pursuant to a consent judgment, defendant agreed to pay \$16,000 civil penalty, \$54,000 investigative expenses. Refunds and adjustments totalled \$16,962.

STATE, ex rel., v. ROYCE D. HANNA
d/b/a ROYCE HANNA & ASSOCIATES

Petition alleged defendant sold living trust packages door-to-door and failed to give notice of cancellation right, alleged the service or product was unconscionably priced, alleged deceptive acts or practices in connection with the solicitations, and alleged defendant engaged in the unauthorized practice of law.

Pursuant to a consent judgment, defendant is ordered to pay restitution to consumers totaling \$14,010.17, is enjoined from the

without disclosing the previous condition, and with making false representations. The matter is pending.

STATE, ex rel., v. HASTINGS BOOKS, MUSIC
& VIDEO, INC.

Consent judgment alleges deceptive acts or practices in connection with a direct mail solicitation. Defendant agreed to pay a civil penalty in the amount of \$4,000, investigative fees in the amount of \$3,000 and charitable contributions in the amount of \$3,000.

STATE, ex rel., v. MICKEY M. MEERS

Petition alleges deceptive and unconscionable acts and violations of door-to-door act in connection with home repairs. Temporary injunction ordered, and the matter is pending.

STATE, ex rel., v. JAMES LEE LANHAM

Petition alleges deceptive and unconscionable acts and violations of door-to-door act in connection with home repairs. The matter is pending.

STATE, ex rel., v. BILLY WAYNE NORTON

Petition alleges deceptive and unconscionable acts and violation of door-to-door act in connection with home repairs. The matter is pending.

STATE, ex rel., v. JOHN CHEZIK OF KANSAS, INC.
d/b/a JOHN CHEZIK ACURA

Defendant sold a vehicle it knew to have been previously wrecked. Defendant voluntarily replaced the vehicle for a new one, and

STATE, ex rel., v. BRUCE BRAATELLIEN
d/b/a AMERICAN CONSUMER MERCHANDISING

Enforcement of subpoena. Closed due to lack of service.

STATE, ex rel., v. NATIONAL MARKETING SERVICES, INC.

Defendant, an Oklahoma corporation, sold large magazine subscriptions to Kansas consumers by telephone. Of the consumers called by defendant, many were elderly. Consumers received billings and harassing telephone calls for magazine subscriptions that had not been ordered. The Attorney General contended that their billings were deceptive and violated Kansas' telemarketing fraud statute by billing consumers before receiving a signed contract as prescribed by law.

The Attorney General accepted a consent judgment in lieu of instigating an action. Defendant paid \$1,500 in civil penalties and \$1,500 in investigative fees and agreed to not bill Kansas consumers without first receiving a contract required by law. Also, defendant agreed to cancel the account balance (after July 1, 1991) of any Kansas consumer who complains to the Attorney General.

STATE, ex rel., v. ISABEL MANDELKERN
d/b/a FLEX PADS INTERNATIONAL and
ISABEL MANDELKERN d/b/a FLEX PADS INTERNATIONAL, INC.

Defendant sold breast prosthetic devices and accessories by telemarketing and mail order to consumers nationwide. The Attorney General has filed suit against the defendants claiming the breast prosthesis (\$1,700.00) and regular bra (\$60.00) were sold at unconscionable prices. Additionally, defendant placed advertisements that were allegedly deceptive by exaggerating about whether the product is custom-made for an individual consumer. Defendant falsely represented that her product was endorsed by the American Cancer Society and others.

The Attorney General is seeking a temporary injunction to enjoin Mandelkern's newly incorporated business, Flex Pads International, Inc., from engaging in unconscionable sales practices pending trial.

The defendant is currently making refunds in the amount of approximately \$135,000 to 35 consumers who purchased a membership from Thousand Adventures, Inc.

STATE, ex rel., v. ALLIED MARKETING GROUP, INC.
d/b/a SWEEPSTAKES CLEARINGHOUSE

The Attorney General sued Allied Marketing Group, Inc. and Audio Telecom, Inc. alleging the defendants committed deceptive acts in connection with their "1-800" sweepstakes promotion. Consumers received a postcard informing them they had won a prize. The consumers were encouraged to call a "1-800" number to learn how they could claim their prize. Numerous consumers who called the "1-800" number received a bill from Audio Telecom despite the fact the call was allegedly "toll-free."

The parties settled the dispute in December of 1992. In the settlement, the defendants agreed to make refunds to any person who was billed by Audio Telecom. Additionally, the defendants agreed to pay \$13,000 in investigation fees to the office of the Attorney General and \$10,000 in donations to various charitable organizations.

STATE, ex rel., v. SHERRY EVANS
d/b/a MANHATTAN BIG BROTHERS/BIG SISTERS
GIFT BOOK

The Attorney General sued Sherry Evans alleging she committed deceptive acts in violation of the Kansas Consumer Protection Act and the Charitable Solicitations and Organizations Act by representing that proceeds from the sale of coupon books would benefit Big Brothers/Big Sisters of Manhattan when in fact none of the proceeds would benefit the charitable organization.

The parties settled the dispute in December of 1992. In the consent judgment, the defendant agreed to pay the office of the Attorney General \$1,000 in investigative fees. Additionally, the defendant agreed to make refunds to consumers who purchased the coupon book provided the consumer surrendered the coupon book and could provide proof that he/she did not use the coupon book.

**OFFICE OF THE ATTORNEY GENERAL
STATE OF KANSAS**

**ROBERT T. STEPHAN
ATTORNEY GENERAL**

CONSUMER PROTECTION STAFF

Daniel P. Kolditz
Shelly Gasper
Mark W. Stafford
David C. Wetzler
Kathy J. Greenlee

Deputy Attorney General
Assistant Attorney General
Assistant Attorney General
Assistant Attorney General
Assistant Attorney General

Carole A. Harvey
Teresa A. Salts
Rodney L. Allen
Randy L. Evans
Eugene C. Stone
* Bruce Stout
* Duff Taylor

Special Agent
Special Agent
Special Agent
Special Agent
Special Agent
Special Agent
Special Agent

Terri Kirby
Karen Mellenbruch
Jo Strimple
Cherryl Smith

Secretary
Secretary
Secretary
Receptionist

* Served a portion of 1992. No longer with Consumer Protection.

